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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/712,478	11/13/2003	John Brian Bartolone	J6868(C)	8322

201 7590 05/20/2004

UNILEVER  
PATENT DEPARTMENT  
45 RIVER ROAD  
EDGEWATER, NJ 07020

EXAMINER

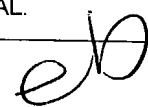
ELHILO, EISA B

ART UNIT PAPER NUMBER

1751

DATE MAILED: 05/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/712,478	Applicant(s) BARTOLONE ET AL.	
	Examiner Eisa B Elhilo	Art Unit 1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/13/2003</u> . | 6) <input type="checkbox"/> Other: _____  |

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Claims 1-29 are pending in this application.

### **DETAILED ACTION**

#### ***Claim Objections***

1. Claims 1 and 16 are objected to because of the following informalities:

The numbering of the method's steps in these claims is improper. The steps of claim 1, should be numbered as i) and ii) and steps of claim 16, should be numbered as i) and ii) to make the claims in a proper form. Appropriate correction is required.

Claims 17- 29 are objected to because the dependency of the claims is improper. The dependency of these claims should be changed from claim 15 to claim 16 to make the claims definite and more proper.

#### ***Double Patenting***

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-29 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-28 of copending Application No. 10/694,971. Although the conflicting claims are not identical, they are not patentably distinct from each other because Brian et al. Application No. 10/694,971, claims

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similar system and similar method of electrochemically dyeing hair comprising applying to the hair a similar system and dyeing composition comprising oxidative dye precursor mixture and contacting the oxidative dye precursor mixture on the hair with an electrode system that provides sufficient voltage to electrochemically oxidize the primary intermediates to produce a reactive intermediate that generates colored dye through a coupling reaction with an oxidative dye precursors present in the mixture and wherein the reactive intermediates are selected from similar components to those claimed as claimed in claims 1 and 16 (see claims 1 and 15 of the Application No. 10/694,971), the method and the system wherein the primary intermediates are selected from similar compounds such as p-phenylenediamine, substituted p-phenylenediamine and an indole as claimed in claims 2 and 17 (see claims 2 and 16 of the Application No. 10/694,971), the method and the system wherein the oxidative dye precursors further comprises couplers selected from similar compounds such as m-substituted phenols, aminophenols and diamines as claimed in claims 3 and 18 (see claims 3 and 17 of the Application No. 10/694,971), the method and the system wherein the oxidative dye precursor mixture has a pH in the ranges from 5.0 to 10.0 or 7.0 to 10.0 as claimed in claims 4-5 and 19-20 (see claims 4-5 and 18-19 of the Application No. 10/694,971), the method and the system wherein the oxidative dye precursor mixture additionally contains supporting electrolytes (salts) selected from similar compounds such as perchlorates, sulfates and borates as claimed in claims 6 and 21 (see claims 6 and 20 of the Application No. 10/694,971), the method and the system wherein the oxidative dye precursor mixture is free of chemical oxidizing agents and/or ammonia as claimed in claims 7, 15 and 22 (see claims 7 and 21 of the Application No. 10/694,971), the method wherein the oxidative dye precursor mixture additionally comprises a shear thinning electrically conducting gel as claimed

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in claim 8 (see claim 8 of the Application No. 10/694,971), the method and the system wherein the electrode system comprises a plurality of anodes in contact with the precursor mixture on the hair and one or more cathodes, wherein the total surface area of the anodes is greater than the total surface area of the cathodes as claimed in claims 9 and 23 (see claims 9 and 22 of the Application No. 10/694,971), the method and the system wherein the electrode system further comprises an aligning and distributing means comprising at least one comb element as claimed in claims 10 and 24 (see claims 10 and 23 of the Application No. 10/694,971), the method and the system wherein the electrode system further comprises a cloth or plastic bonnet or cap into which electrodes are embedded that can contact the hair to which the precursor mixture is applied as claimed in claims 11 and 25 (see claims 11 and 24 of the Application No. 10/694,971), the method and the system wherein the voltage is provided by a disposable or rechargeable battery as claimed in claims 12 and 26 (see claims 12 and 25 of the Application No. 10/694,971), the method and the system wherein the electrode system further comprises a switch, an on-off indicator or current regulator as claimed in claims 13 and 27 (see claims 13 and 26 of the Application No. 10/694,971), the method and the system wherein the electrode system provides a regulatable voltage such that different colored dye molecules can be produced as claimed in claims 14 and 28 (see claims 14 and 27 of the Application No. 10/694,971), the system wherein a written instructions is provided to apply the oxidative dye precursor mixture to the hair followed by the application of the electrode system to the hair as claimed in claim 29 (see claim 28 of the Application No. 10/694,971). Therefore, this is an obvious process.

Although the claims of the Application No. 10/694,971, teach and disclose similar method and system, they are not identical to the instant claims, because the claims of the

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Application No. 10/694,971, teaches a method and system for dyeing hair without the need of chemical oxidants, while the instant claims are silent about the need for chemical oxidants, except the dependent claims 7 and 22. Therefore, the conflicting claims are not identical.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### *Conclusion*

4 The references listed on from 1449 have been reviewed and considered by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on (571) 272-1316. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo  
Patent Examiner  
Art Unit 1751

May 12, 2004